

MAYOR HADJI AMER R. SAMPIANO, SOMER ABDULLAH, SALIC TAMPUGAO, ANTHONY ABI, SAGA POLE INOG, TORORAC DOMATO, KING MARONSING, MARGARITA SOLAIMAN, HADJI ACMAD MAMENTING AND BILLIE J...

A.M. No. RTJ-05-1953. December 21, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This administrative case against respondent Judge Cader P. Indar of the Regional Trial Court (RTC), Branch 12, Malabang, Lanao del Sur stemmed from a complaint[1] filed by Hadji Amer R. Sampiano (Sampiano), incumbent Mayor, and the members of the Sangguniang Bayan of the Municipality of Balabagan, Lanao del Sur, charging said judge with gross and wanton ignorance of the law, grave abuse of authority, manifest partiality and serious acts of impropriety in connection with the issuance of an Order[2] dated October 11, 2004 in Special Civil Action (SCA) No. 12-173,[3] entitled *Sumulong Sampiano Ogka (Ogka) v. Philippine National Bank(PNB)-Marawi Branch*, represented by its Branch Manager Sandorie T. Disomangcop (Disomangcop), Atty. Alvin C. Go (Go), Hadji Amer Sampiano and Mamarinta Macabato (Macabato), for Prohibition and Injunction with Temporary Restraining Order (TRO) and Preliminary Injunction.

The antecedent facts are as follows:

Prior to the filing of the present administrative case, complainant Sampiano filed before the Commission on Elections (Comelec) a Petition for Annulment of Proclamation with Prayer for Preliminary Injunction/TRO[4] against his rival mayoralty candidate, his uncle Ogka, and the Municipal Board of Canvassers of Balabagan, Lanao del Sur composed of Vadria Pungginagina and Zenaida Mante. The case was docketed as SPC No. 04-285. It appears that the Comelec issued the following: Order dated August 4, 2004[5] (authorizing the vice-mayor to temporarily assume the duties and responsibilities as mayor due to the double proclamation of Sampiano and Ogka for the position of mayor), Order dated August 12, 2004[6] (recalling the Order authorizing the assumption of the vice-mayor as the mayor, and instead maintaining the status quo prevailing at the time of the issuance of the said Order), and Order dated September 9, 2004[7] (clarifying the Order of August 12, 2004). Pursuant to the said Orders, Sampiano was ordered to act, perform and discharge the duties, functions and responsibilities as mayor "to prevent paralysis to public service" pending determination and final resolution of the controversy involving the mayorship of the Municipality of Balabagan.

Aggrieved, Ogka filed, on September 13, 2004, an Urgent Motion for Reconsideration of the September 9, 2004 Order.[8] He also informed in writing,[9] the Chief Legal Counsel of PNB, Atty. Alvin C. Go, and asked him not to release the IRA (Internal Revenue Allotment which is the share of the local government unit in national internal revenue taxes) for the Municipality of Balabagan, Lanao del Sur until the controversy involving the mayorship of the said municipality now pending with the Comelec shall have been finally resolved. He cited Section 2, Rule 19 of the Comelec Rules of Procedure which provides that a motion for reconsideration, if not pro-forma, suspends

the execution or implementation of the decision, resolution, order or ruling. However, on the basis of the Comelec Order dated September 9, 2004, Go directed PNB-Marawi to release the July, August, and September 2004 IRA for the Municipality of Balabagan, Lanao del Sur to Sampiano and Macabato (the Municipal Treasurer). In turn, PNB-Marawi acting through its manager, Disomangcop, released on September 14, 2004 the pending IRA for the months of July to September 2004. To temporarily suspend the release by the PNB-Marawi of the October 2004 IRA while his Urgent Motion for Reconsideration of the September 9, 2004 Order of the Comelec is pending resolution, Ogka filed on October 11, 2004, a special civil action for Prohibition and Injunction with TRO and Preliminary Injunction,[10] docketed as SCA No. 12-173, with the RTC, Branch 12, Malabang, Lanao del Sur presided over by herein respondent Judge. The petition contained the following prayer:

WHEREFORE, all the foregoing premises considered, petitioner thru counsel, most respectfully prays this Honorable Court that:

(1) Considering the urgency of the subject matter of the petition, a temporary restraining order (TRO) be immediately issued upon the filing of this petition ORDERING

(a) respondent Atty. Alvin C. Go to cease and desist from issuing an order ordering the respondent PNB-Marawi Branch manager Sandorie T. Disomangcop to release the October 2004 IRA and the months thereafter to respondents Hadji Amer Sampiano and Mamarinta Macabato or their agents or persons acting for and in their behalves,

(b) respondent PNB-Marawi thru Sandorie T. Disomangcop to cease and desist from accepting and honoring any withdrawal check(s) for the October 2004 IRA of Balabagan signed by respondents Hadji Amer Sampiano and Mamarinta Macabato and or releasing the October 2004 IRA for Balabagan, Lanao del Sur to respondents Mamarinta Macabato and Hadji Amer Sampiano or their agents or persons acting for and in their behalves, and

(c) respondents Hadji Amer Sampiano and Mamarinta Macabato including their agents or persons acting for and in their behalves to cease and desist from withdrawing/releasing the October 2004 IRA for Balabagan, Lanao del Sur from the respondent PNB-Marawi; and

(2) After, notice and hearing, a writ of preliminary injunction (WPI) be issued against the respondents including the persons acting for and in their behalves under the same terms and conditions as the TRO for a period lasting until the petition in SPC No. 04-285 pending before the Comelec shall have been finally decided.[11]

On the same day, respondent Judge issued an Order setting the hearing of the petition on October 14, 2004. He likewise directed, pending resolution of the said petition, the PNB-Marawi (represented by Disomangcop and Go) to hold or defer the release of the IRA for the Municipality of Balabagan unless ordered otherwise by the court, thus:

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In the meantime, considering that the urgency of the Petitioner (sic) and while the petition is pending resolution of the Court, the Philippine National Bank represented by its Branch Manager Sandorie T. Disomangcop and Atty. Alvic C. Go, are hereby ordered to hold or defer the release of the Internal Revenue Allotment (IRA) intended for the Municipal Government of Balabagan unless ordered otherwise by this Court. [12]

Sampiano also alleged that during the October 14, 2004 hearing, his counsel clarified with respondent Judge if the October 11, 2004 Order was in the nature of a TRO. Respondent Judge replied that it was not. His counsel then vigorously prodded respondent Judge to immediately lift the said Order so as not to deprive the officials and employees of the Municipality of Balabagan from receiving their hard earned salaries, but respondent Judge did

not heed the said request.[13] As manifested during the said hearing, Sampiano and Macabato through counsel filed their Motion to Dismiss the petition (SCA No. 12-173) on October 19, 2004. In the said motion, they prayed not only for the dismissal of the said petition for lack of jurisdiction over the subject matter and for failure to state a cause of action, but also for the lifting of the October 11, 2004 Order.[14]

Sampiano considered the October 11, 2004 Order as a "SUPER ORDER" because it was not only issued ex-parte but also it directed the PNB-Marawi to hold or defer the release of the IRA "until ordered otherwise by [the] court." He likened the said Order to a TRO and a writ of preliminary injunction, and insisted that in both instances, prior notice and hearing are required. He added that a TRO has a limited life of twenty (20) days while a writ of preliminary injunction is effective only during the pendency of the case and only after posting the required injunction bond. Sampiano further claimed that the said Order was issued in violation of Section 286 of the Local Government Code (LGC), which provides for the automatic release of the share of the local government unit from the national government.[15] Sampiano prayed that respondent Judge be dismissed from judicial service for gross ignorance of the law, grave abuse of authority, manifest partiality and serious acts of impropriety for the following reasons:

- Assumption of jurisdiction over SCA 12-173 the subject matter of which concerns the enforcement of election laws by the Comelec; and
- Ex-parte issuance of the October 11, 2004 order freezing the IRA of the Municipality of Balabagan "unless ordered otherwise by the Court."

By 1st Indorsement of November 8, 2004, then Court Administrator Presbitero J. Velasco, Jr. (now Supreme Court Associate Justice) required respondent Judge to file his comment and to show cause why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer.[16]

In his Comment[17] dated December 24, 2004, respondent Judge denied the charges against him and prayed for the dismissal of the complaint. His explanation as summarized by the OCA is as follows:

xxx He believed that he could not be administratively sanctioned as he did not commit any administrative lapses. His court assumed jurisdiction over [SCA] No. 12-173 as it is a petition for prohibition and injunction and not an enforcement of election laws. While he considered the said petition as an improper remedy, hence, the court should not have taken cognizance of the case, he had nevertheless acted on it since the petition prays for the issuance of temporary restraining order and preliminary injunction, both an auxiliary remedy which concerns the "enforcement of legal right or a matter that partakes of a question of law" and not the enforcement of election laws.

Considering the urgency of the petition and before granting the prayer for the issuance of the TRO, he immediately issued an order on October 11, 2004, which defer or hold the release of the Internal Revenue Allotment (IRA) pending resolution of the petition by the court and thereafter set the hearing of the petition on October 14, 2004. Respondent emphasized that the October 11, 2004 order DID NOT FREEZE the IRA but merely HELD or DEFERRED its release to any person including petitioner Sumulong Sampiano Ogka (who is the complainant's uncle), a party to the election case who also holds [a] "COMELEC proclamation" as duly elected mayor of Balabagan. Said proclamation was neither annulled nor invalidated by the COMELEC pending resolution of the petitioner Ogka's Motion for Reconsideration of the above-mentioned three (3) orders. Since petitioner Ogka was left with no alternative to protect his interest in the IRA and to prevent irreparable injury, he filed the instant petition with the prayer for the issuance of TRO and preliminary injunction.

The main issue in petitioner Ogka's petition is the determination of whether petitioner is entitled to the issuance of TRO and later, a permanent injunction to hold the release of the IRA to Hadji R. Sampiano or to any person

acting in his behalf considering that petitioner is also a holder of [a] "COMELEC" proclamation.

There is no question that the COMELEC is vested under the Constitution with the enforcement of election laws. However, he [respondent] did not arrogate upon himself such power as he neither contracted nor annulled any order of the COMELEC. Under Section 21 of B.P. 129, the RTC has exclusive original jurisdiction in the issuance of writ of prohibition and injunction. Hence, he simply applied Rule 58 of the Rules of Court, which is the prevailing rule applicable in determining the merits of the subject petition. He did not require petitioner to post a bond because the 11 October 2004 Order is a mere "initiatory" action necessary to determine whether it warrants the issuance of the TRO and preliminary injunction. It is only after such determination that the posting of bond is required. His careful actions are supposed to be considered as an exercise of judicial function and judicial prerogatives.

Moreover, he was also cautious in his actions to avert the already growing tension between the warring families newly aroused by the result of the May 10, 2004 election. Hence, he has to relax the application of the rules and harmonize it with the temperament of the protagonists who are Maranaos belonging to the same family clan.

Concerning the alleged violation of the pertinent provision of the Local Government Code, respondent believes that the provision on the automatic release of IRA is not a shield or immunity to the authority of the courts to interfere, interrupt or suspend its release when there is a legal question presented before it in order to determine the rights of the parties concerned.

Lastly, respondent was not able to continue handling the subject case, particularly the complainant's motion to dismiss save the issuance of an order requiring petitioner Ogka to file his comment to the said motion considering that he was already relieved of his duties and responsibilities as presiding judge of RTC, Branch 12, Malabang pursuant to Administrative Order No. 154-2004 designating and assigning him on permanent detail in all the branches of the RTC, Cotabato City. Hence, it was already the new acting judge in the person of Hon. Rasad G. Balindong who proceeded with the hearing of the subject petition. Upon verification, he learned that Judge Balindong had already issued an order dated 25 November 2004 dismissing the subject petition.

Considering all of the foregoing, respondent prays for the immediate dismissal of the instant complaint for being preposterous so that he can concentrate on his judicial tasks more important than the instant harassment suit.[18]

The OCA filed with the Court an Administrative Matter for Agenda with the following recommendation.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court our recommendation that respondent judge be found guilty of ignorance of the law for violating Section 5 of Rule 58, Revised Rules on Civil Procedure and that he be imposed a penalty of FINE in the sum of Ten Thousand (P10,000.00) pesos.[19]

In a Resolution dated September 7, 2005, the Court resolved to re-docket the case as a regular administrative matter and on December 11, 2006, we required the parties to manifest, within ten (10) days from notice, whether they were submitting this case for resolution on the basis of the pleadings already filed. Both parties failed to comply; hence, we considered the case submitted for resolution.

We agree with the findings of the OCA that the October 11, 2004 Order is essentially a preliminary injunction order, and that the respondent Judge failed to comply with the provisions of Section 5, Rule 58 of the Rules of Court.

We shall first tackle the question of whether the RTC had acquired jurisdiction over the petition. It is settled that jurisdiction over the subject matter on the existence of the action is determined by the material allegations of the

complaint and the law, irrespective of whether or not the plaintiff is entitled to recover all or some of the claims or relief sought therein. Such jurisdiction cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.[20] In this case, the petition prayed, among others, that Go should cease and desist from ordering PNB-Marawi through its branch manager to release the IRA for the month of October 2004 and the succeeding months to Sampiano and Macabato or their agents. The issue here involves the determination of whether Ogka is entitled to the issuance of a TRO or an injunction and not the application or enforcement of election law. Undeniably, the RTC has jurisdiction over such action pursuant to Section 21 of BP 129, which provides:

SEC 21. Original jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

(1) in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions; xxx (*italics ours*)

Sampiano's claim that the October 11, 2004 Order was in contravention of Section 286 of the LGC on the automatic release of the share of the local government unit is untenable. We agree with respondent Judge that the automatic release of the IRA under Section 286 is a mandate to the national government through the Department of Budget and Management to effect automatic release of the said funds from the treasury directly to the local government unit, free from any holdbacks or liens imposed by the national government. However, this automatic release of the IRA from the national treasury does not prevent the proper court from deferring or suspending the release thereof to particular local officials when there is a legal question presented in the court pertaining to the rights of the parties to receive the IRA or to the propriety of the issuance of a TRO or a preliminary injunction while such rights are still being determined.

A cursory reading of the said Order reveals that it was in effect a TRO or preliminary injunction order. The Order directed PNB's Go and Disomangcop to hold or defer the release of the IRA to Sampiano and Macabato while the petition is pending resolution of the trial court and unless ordered otherwise by the court. This Order was merely consistent with the relief prayed for in respondent's petition for prohibition and injunction.

Section 5, Rule 58 of the Rules of Court provides:

SEC. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from the facts shown by the affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order (as amended by En Banc Resolution of the Supreme Court, Bar Matter No. 803, dated February 17, 1998).

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of the effectivity of the temporary restraining order

exceed twenty (20) days, including the original seventy-two (72) hours provided therein.

The above-quoted provisions expressly prohibit the grant of preliminary injunction without hearing and prior notice to the party or person sought to be enjoined. However, courts are authorized to issue ex parte a TRO effective only for seventy-two (72) hours if it should appear from the facts shown by affidavits or by the verified petition that great or irreparable injury would result to the applicant before the matter could be heard on notice. Within the aforesaid period of time, the Court should conduct a summary hearing to determine if a TRO shall be issued. The TRO, however, shall be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. During the 20-day period, the judge must conduct a hearing to consider the propriety of issuing a preliminary injunction. At the end of such period, the TRO automatically terminates without need of any judicial declaration to that effect, leaving the court no discretion to extend the same.[21]

Here, respondent Judge issued the October 11, 2004 Order on the very same day it was filed, and without any hearing and prior notice to herein complainants. As discussed above, respondent was allowed by the Rules to issue ex parte a TRO of limited effectivity and, in that time, conduct a hearing to determine the propriety of extending the TRO or issuing a writ of preliminary injunction.

Respondent conducted the hearing of the petition on October 14, 2004 or on the third day of the issuance of a TRO ex parte. Atty. Romaraban Macabantog (Macabantog) and Atty. Tingcap Mortaba (Mortaba) -- counsels for Ogka and Sampiano, respectively - argued in their clients' behalf. Sampiano and Macabato were also present. During the said hearing, Atty. Mortaba manifested that his clients would either file an answer or a motion to dismiss the petition (in SCA No. 12-173), while Atty. Macabantog opted to file a rejoinder after the latter has submitted their answer or motion to dismiss.[22] On October 19, 2004, Sampiano and Macabato filed a Motion to Dismiss the petition, wherein, they prayed, among others, for the recall or lifting of the October 11, 2004 Order. Respondent Judge pointed out that he was able to make an initial action on the Motion to Dismiss the petition by requiring Ogka to comment[23] on the said motion before turning the case to the incoming Acting Presiding Judge, Judge Rosad B. Balindong, on October 22, 2004.[24] The October 11, 2004 Order was lifted in an Order dated October 27, 2004 issued by the latter.[25] Hence, the TRO issued ex parte was effective for eleven (11) days from October 11, 2004 until October 22, 2004 in violation of the Rules. Only a TRO issued after a summary hearing can last for a period of twenty days.

It is worthy to note that the said October 11, 2004 Order was subsequently lifted by the succeeding judge on the ground that the requisites for issuance of a writ of preliminary injunction were not present.

However, Sampiano adduced no evidence to prove that the issuance of the October 11, 2004 Order was motivated by bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[26] In issuing the assailed Order, respondent Judge was not at all motivated by bad faith, dishonesty, hatred and some other motive; rather, he took into account the circumstances obtaining between the parties as can be gleaned from his Comment, and we quote:

This should be considered an exercise of judicial functions and judicial prerogatives in the most cautious manner taking into account the factual and serious circumstances obtaining between petitioner Ogka and his Uncle Mayor Sampiano whose family were already at war with each other.

Further, respondent judge was cautious in his court actions in this petition in order to avert the already growing tension between the warring families aroused anew by the result of the May 10, 2004 elections. xxx [27]

Since there is no showing that respondent Judge was motivated by bad faith or ill motives in rendering the assailed Order, and this is his first offense, we sustain the penalty recommended by the OCA to be imposed on respondent Judge for violating Section 5, Rule 58 of the Rules of Court.

WHEREFORE, the penalty of a fine of Ten Thousand Pesos (P10,000.00) is hereby imposed on respondent Judge for the above-mentioned violation of the Rules of Court.

SO ORDERED.

Puno, (Chairperson), Carpio Morales, Bersamin, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 2-10.

[2] Annex "B" of the Complaint; id. at 48.

[3] Annex "A" of the Complaint; id. at 11-19.

[4] Annex "C-32" of the Complaint; id. at 81-94.

[5] Annex "A-14" of the Complaint; id. at 24-25.

ORDER

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In the meantime, considering that this is a case of double proclamation, petitioner [Sampiano] having been issued a Certificate of Canvass and Proclamation dated May 24, 2004 and respondent's [Ogka's] claim being based on the Certificate of Canvass and Proclamation dated June 6, 2004, both parties are ordered to cease and desist from performing the function of Mayor of Balabagan, Lanao del Sur. While the case is pending, the duly elected vice-mayor is directed to temporarily assume the post of Mayor of said municipality pursuant to the rule on succession as provided for under the Local Government Code to avoid a vacuum of leadership in the municipality.

[6] Annex "A-16" of the Complaint; id. at 26-29.

ORDER

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hereby orders as follows:

1) to set aside the second paragraph of its Order dated 04 August 2004, which reads:

"In the meantime, considering that this is a case

2) to maintain the status quo prevailing at the time of the issuance of the foregoing Order.

[7] Annex "A-20" of the Complaint; id. at 30-32

ORDER

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the Commission (First Division) CLARIFIES that:

1. The "Status Quo" to be maintained and referred to in the August 12, 2004 Order means that the petitioner

[Sampiano] shall hold office and exercise the powers and duties of Mayor.

and hereby ORDERS that:

- Petitioner Hadji Amer R. Sampiano shall PERFORM the functions, duties and responsibilities of MUNICIPAL MAYOR of the Municipality of Balabagan, Lanao del Sur.

- The foregoing Order shall TAKE EFFECT IMMEDIATELY to prevent paralysis to public service in the aforementioned municipality.

[8] Annex "A-23" of the Complaint; id. at 33-46.

[9] Annex "A-37" of the Complaint; id. at 47.

[10] Supra note 3.

[11] Id. at 18.

[12] Supra note 2.

[13] Rollo, pp. 4 and 8.

[14] Annex "C" of the Complaint; id. at 49-64.

[15] Sec. 286. Automatic Release of Shares. - (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

[16] Rollo, p. 99.

[17] Id. at 101-110.

[18] Id. at 138-139.

[19] Id. at 140-141.

[20] Dandoy v. Maglangit, G.R. No. 144652, December 16, 2005, 478 SCRA 195, 200.

[21] Columbres v. Madronio, A.M. No. MTJ-02-1461, March 31, 2005, 454 SCRA 185, 192.

[22] Rollo, p. 123.

[23] Id. at 130.

[24] Id. at 127.

[25] Id. at 131-132.

[26] Planas v. Reyes, A.M. No. RTJ-05-1905, February 23, 2005, 452 SCRA 146,160.

[27] Rollo, p. 107.

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